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EXAMINER
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PUROL, DAVID M

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/722,041  
Filing Date: November 24, 2003  
Appellant(s): FREUDENBERG ET AL.

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Kimberly Zillig  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 16, 2008 appealing from the Office action mailed August 16, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,355,323	Iwen et al	3-2002
5,090,972	Eller et al	2-1992

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1,2,6-7,12-21,23-27,29,30,33,34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Iwen et al in view Eller et al.

Iwen et al disclose the claimed method including a polymeric film 10 having adhesive 32 which is secured to working and non-working surfaces so as to form an enclosure so as to isolate a space to contain physical material for subsequent removal. Note the discussion in the Background of the Invention in column 1 of Iwen et al which further discloses the claimed method and sets forth the use of individual layers of sheets. While Iwen et al do not specifically disclose the step of applying negative pressure within the enclosed space during the removal step, Eller et al disclose a method of material abatement which utilizes the step of applying a negative pressure 44,46, wherein, to incorporate this teaching into the method of Iwen et al for the explicit purpose of facilitating the removal of material would have been obvious to one ordinary skill in the art. Regarding the claim recitation setting forth the barrier sheets as being in an overlapping relationship, note that Eller et al disclose the use of overlapping sheets 20, accordingly, the feature of overlapping sheets cannot be relied upon for patentability. As to the amount of adhesive employed, one having ordinary skill in the art would have readily recognized that the particular amount and the specific type of adhesive used for its explicit purpose of securing would have been readily evident and as such this feature cannot be relied upon for patentability.

#### **(10) Response to Argument**

The appellants' argue that the Iwen et al. reference provides a system for covering surfaces that utilizes a single sheet specifically folded and applied to get two-layer coverage from a single sheet to eliminate seams and thus possible leakage points and the Eller et al. reference is an entirely different approach that provides a temporary wall to partition an area of a room, which temporary wall is a ventilation control structure including flaps arranged from plural sheets to permit limited air flow into the partitioned

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area as such is subject to negative pressure whereas the present invention takes a contrary approach to either of these by utilizing plural or multiple sheets arranged to cover non-working surfaces where seams are purposefully created and appropriately sealed according to inventive aspects of the presently claimed invention. This is not convincing for Iwen et al specifically set forth in column 1 a method of abatement which includes the steps of hanging a sheet of film from the wall to be covered and securing it with adhesive and then repeating this process resulting in two layers of protective masking covering the walls. The claims of the instant application do not preclude the presence of a temporary wall to partition an area of a room hence it is immaterial that Eller et al disclose such a feature.

The appellants argue that Iwen et al. disclose a specific manner and system that utilizes a single sheet of material to eliminate as many seams as possible as the fundamental important point of its system design since elimination of seams or potential escape openings is critical to their approach to control an environment where abatement is to be conducted. The appellants further state that the Examiner to the contrary suggests that one of ordinary skill in the art would look at the system of Iwen et al. and instead create seams by starting with plural sheets of material and seaming them together as a substitute for the single folded sheet approach of Iwen et al which is a complete destruction of the approach of Iwen et al. This is not convincing for Iwen et al in column 1 explicitly set forth the use of a plurality of sheets of material adhered to the room surfaces of which encapsulation is desired.

The appellants argue that the combination of teachings of Eller et al. to the system of Iwen et al. would be that instead of covering all non-working surfaces of a room, the room would include a partitioning wall provided with ventilation flaps that permit air flow

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through them and such a modification would be directly contrary to the purpose of the system of Iwen et al. which is to eliminate leakage to or from its controlled environment. This argument appears to be based upon conjecture for there is nothing to indicate that one following the teachings from the Iwen et al reference would forego the covering of all non-working surfaces of a room and instead include a partitioning wall provided with ventilation flaps. The appellants further state that even if Eller et al. could somehow suggest to take the folded sheet described in Iwen et al., cut it into multiple pieces, and apply the pieces to non-working surfaces, Eller et al. would then teach that any creation of overlapping seams would be provided without sealing them together so that they act as flaps to permit air flow as part of a ventilation procedure. This is not convincing for the reference to Eller et al has not been relied upon for the teaching of taking the folding sheets described in Iwen et al and cutting them into multiple pieces and applying the pieces to non-working surfaces. It is the Iwen et al reference which explicitly sets forth the sealing of individual sheets to non working surfaces. Note column 1 of Iwen et al which explicitly states "The current method according to accepted standards is to hang a sheet of film, typically twelve feet wide, from the wall being covered. The sheet is secured with duct tape, spray adhesive and staples. The process is then repeated resulting in two layers of protective masking covering the walls." and "First, the worker unrolls and, if necessary, cuts the film from the roll to a dimension somewhat longer than the perimeter of the room being encapsulated. Without unfolding the detached length, the worker positions the plastic and affixes it at the highest point of the wall using a combination of spray, adhesive tape and staples, if possible. The material is then unfolded and extended completely to the floor where it is also secured using the adhesives and tape. The entire process is

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then repeated by the worker, using a second roll of material with the end result being two individual layers of barrier film attached to the wall surface.”.

The appellants argue that the holding system of the barrier sheets comprises an adhesive layer that substantially covers a major surface of the first and second barrier sheet lengths and it is submitted that this limitation further distinguishes from the Iwen et al. and Eller et al. references as taken in combination or separate from one another for within this adhesive layer, intermediate and edge adhesive zones are included, and an overlapping portion of the first and second barrier sheet lengths are adhesively sealed, wherein, neither reference discloses or suggests the provision of an adhesive layer that substantially covers a major surface of any barrier sheet and in fact, each reference teaches to the contrary. This is not convincing for Iwen et al explicitly set forth in columns 3-4 a detailed analysis of the amount of adhesive one may employ to achieve the desired predictable result of maintaining the sheets in a predetermined position. For example, column 3 states "It is also understood that one or more than one adhesive strip can be positioned anywhere lengthwise or otherwise on one or both sides of the sheet as desired. The strip is positioned at predetermined distances from the top and bottom edges of the sheet to effect a 2-ply barrier when the sheet is affixed to a structure and the sheet unfolds to its fully extended length." and column 4 sets forth "In one preferred embodiment, it is contemplated that the sheet may have additional adhesive areas, optionally covered with a release paper. For example, such additional adhesive strips could occur at the side ends or top and bottom edges of the side sheet. Such additional adhesive strips would allow a worker to expose the adhesive strips and then seal the sheet ends either together or to the structure being masked (i.e. the wall or the floor)." and "The adhesive strip is applied to the desired

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location of the material on the roll according to any useful process. The adhesive may be applied continuously or non-continuously on a web. Any adhesive may be used. However, adhesives that adhere well, but do not damage the coatings on the structures to which they are adhered are most desirable. For specific jobs such as asbestos remediation, regulations may require that a film is held in place and is impervious to asbestos fiber for a period of from about one day to about 30 days (depending upon the local or Federal regulation). Therefore, the adhesive chosen will be a function of the desired cling time relative to the overall weight of the sheet material. The preferred adhesives include acrylic, waterbase solvent, and copolymeric adhesives, with copolymeric adhesives being most preferred.” This disclosure of the adhesive as set forth by Iwen et al fully responds to the appellants claimed intermediate and edge adhesive zones including the overlapping portions and major surface.

The appellants argue that neither Iwen et al or Eller et al or any combination thereof disclose the application of a negative pressure of 0.02 inches of water within the enclosed space and maintaining the billowing as a result of the adhesive holding system to less than 2 inches. This argument is based upon for conjecture for there is nothing to indicate within the references to Iwen et al or Eller al that in fact billowing of more than 2 inches occurs. Even so, however, as noted above Iwen et al set forth that the adhesive chosen will be a function of the desired cling time relative to the overall weight of the sheet material and to have selected the required amount of adhesive for its explicit purpose of securing the sheets to a desired surface does nothing more than yield a predictable result.



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The additional arguments the appellants' have set forth have been either fully considered but they are not persuasive in that they are redundant or are merely statements which point out what the claims recite which is not considered arguments directed to the patentability of the claims.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/David M Purol/  
Primary Examiner  
Art Unit 3634

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August 25, 2008